**S.F. 1995**

(LeClair)

H.F. 2196

(Charron)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): PERA-General
Relevant Provisions of Law: Uncoded
General Nature of Proposal: Prior Service Credit Purchase
Date of Summary: January 23, 2006

Specific Proposed Changes

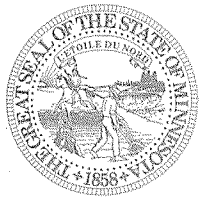
- Permits a public defender with six years of prior uncovered service credit to purchase credit for that service at its full actuarial value payment.

Policy Issues Raised by the Proposed Legislation

1. Conformity with Historic Policy Considerations about Service Credit Purchases.
2. Equitable Considerations Connected with the Proposed Service Credit Purchase
3. Appropriate Prior Service Credit Purchase Payment Amount
4. Precedent

Potential Amendments

LCPR-S1995-A1: Reduces the period available for purchase to 21 months, reflecting the result of reported discussions between PERA and the affected individual (substantive).



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Lawrence A. Martin, Executive Director *JAM*

RE: S.F. 1995 (LeClair); H.F. 2196 (Charron): PERA; Service Credit Purchase for a Period of Prior Employment as a Public Defender

DATE: January 23, 2006

Summary of S.F. 1995 (LeClair); H.F. 2196 (Charron)

S.F. 1995 (LeClair); H.F. 2196 (Charron) is special legislation that permits a class of individuals, intentionally narrowly drawn to be limited to R. Susan Duffy only, to purchase up to six years of allowable service credit in the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) upon the payment of the full actuarial value of the PERA-General benefit obtained by the purchase. The Tenth Judicial District Public Defenders Office or Washington County would be permitted to pay the employer portion of the service credit purchase payment amount.

Public Pension Problem of R. Susan Duffy

R. Susan Duffy is a 55-year-old public defender from southern Washington County and, as such, is a current member of the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General). Ms. Duffy, a member of the Teamsters Union, Local 320, has a period of local government service during which she was excluded from retirement coverage by the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) and for which she now wishes to purchase PERA-General service credit in order to improve her eventual public retirement annuity amount.

The uncredited period is from January 1, 1988, to January 1, 1994.

In materials provided, Ms. Duffy indicates that she:

- was employed as a part-time public defender by the Tenth Judicial District on July 1, 1987, while she was primarily engaged in the private practice of law;
- became a member of PERA-General on January 1, 1988;
- approached PERA in 1990 about terminating her PERA-General coverage because her public defender contract was so small;
- was determined by PERA to be (and to have been) excluded from membership eligibility under Minnesota Statutes 1990, Section 353.01, Subdivision 2b;
- received a return of her PERA-General contributions as member deductions taken in error in 1990;
- resumed PERA-General retirement coverage in January 1994; and
- is now a member of MSRS-General, following the 1995 merger of the state and county public defense organizations.

Background Information on Service Credit Purchases in Minnesota Public Pension Plans

Background information on service credit purchases from Minnesota defined benefit public pension plans and the policy considerations of the Legislative Commission on Pensions and Retirement in processing service credit purchase requests is attached as Appendix A.

Background Information on the PERA Exclusion of Independent Contractors and Part-Time Professionals

Background information of the exclusion of independent contractors and part-time professional employees from coverage by the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) is attached as Appendix B.

Discussion and Analysis

The proposed legislation raises several pension and related public policy issues that may merit consideration and discussion by the Legislative Commission on Pensions and Retirement, as follows:

1. Conformance with the Historic Policy Considerations about Service Credit Purchases. The policy issue is the extent of conformity of the proposed legislation with the historic policy considerations

used by the Legislative Commission on Pensions and Retirement to evaluate service credit purchases. With the exception of the potential equitable considerations, the proposed legislation conforms with the historic policy consideration elements, meaning that the legislation applies on an individual basis, involves employment with a public connection, has a Minnesota connection, involves a current active retirement plan member, and involves a defined benefit plan.

2. Equitable Considerations Connected with the Proposed Service Credit Purchase. The policy issue is whether or not there are equitable considerations adverse to Mrs. R. Susan Duffy and her request for a special service credit purchase authorization. The potential adverse equitable considerations would be the character of the six-year period as service that was excluded from coverage by the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) at the time and the length of time that has elapsed since the uncredited period was rendered (as of January 1, 1994) and this date. During the period 1987 to 1993, service by professionals, such as attorneys, which was a combination of public sector employment and other nonpublic employment was only included in PERA-General retirement coverage if the public employment portion of the total exceeded 25 percent. In Ms. Duffy's situation, based on the records provided to the Commission staff, it does not appear that her public sector compensation exceeded 25 percent at any time during the six-year service credit purchase request period and so was not eligible for PERA-General coverage at the time. Generally, the Legislative Commission on Pensions and Retirement and the Legislature have not supported retroactively making a period of employment excluded from public pension plan retirement coverage or a period of comparable service eligible for retirement coverage through special legislation. The statutory restriction on the inclusion of part-time professional services that caused or allowed her exclusion from PERA-General coverage between 1988 and 1994, however, did not exist before 1987 and was eliminated in 1993, so for much of PERA's history, professionals serving part time in the public sector have been covered unless the service was clearly that of an independent contractor. The period since Ms. Duffy's uncredited employment was rendered, 1994 to 2005, is somewhat long, but the correspondence provided by Ms. Duffy indicates that she did unsuccessfully attempt in the past to repay the omitted member deductions returned to her in 1990 on several occasions as refund repayments.
3. Appropriate Prior Service Credit Purchase Payment Amount. The policy issue is the appropriateness of a very expensive full actuarial value prior service credit purchase payment. The Public Employees Retirement Association (PERA) has provided the Commission staff with an estimated prior service credit purchase payment requirement of \$10,383 for the purchase of a period of additional service of 21 months rather than the six years specified in the bill as drafted. The additional service credit would increase her eventual PERA-General retirement annuity by approximately \$82 per month. In the documents provided, Ms. Duffy implicitly makes an argument for a service credit purchase with a payment, by her, of only the equivalent PERA-General member contributions, plus interest, as if the purchase was a repayment of a refund. This option is not reflected in the proposed legislation. Ms. Duffy argues that PERA failed to correctly implement its membership exclusion law, covered her under the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) for a period when her service was ineligible, and only took action to exclude her when she raised the issue. Her "voluntary" actions to be excluded from PERA-General, she appears to argue, places her in a position more akin to a repayer of a refund. However, Ms. Duffy does indicate that her motivation in 1990 was personal and economic, since her PERA-General coverage disallowed her coverage by an Individual Retirement Account (IRA) under the federal tax laws at the time and her PERA-General member contributions displaced money that she could have contributed to an IRA. While her motivation is not wholly on point or determinative, it does place her voluntary action to obtain exclusion in some context. A potential payment of a member equivalent contribution, with interest only, in Ms. Duffy's case, would not be the equivalent to a repaid refund, since the employer contributions to PERA-General made during the period 1988-1990 were returned to her employer in 1990, which is not the case with respect to refunds, and no employer contribution was made for the remaining period. The full actuarial value payment amount is likely to be very sizable and will be an amount greater than the "full actuarial value-light" payment determination procedure that was in place from 1998 until May 2004 under Minnesota Statutes 2002, Section 356.55. While the Minnesota Statutes, Section 356.55, procedure charged purchasers less than the Minnesota Statutes, Section 356.551, procedure does, the pre-May 2004 procedure clearly appeared to undercharge late career purchases and to overcharge earlier career purchases and was allowed to expire for that reason. Although Minnesota Statutes 2002, Section 356.55, constituted a "full actuarial value-light payment requirement," the Minnesota Statutes, Section 356.551, procedure could constitute a "full actuarial value-heavy payment requirement" and it may merit from additional study and review by the Commission and other interested parties. Amendment LCPR-S1995-A1 would reduce the purchase period to 21 months, consistent with discussions between PERA and Ms. Duffy.

4. Precedent. The policy issue is whether or not there is any precedent for the proposed legislation from past special legislation and whether or not the proposed legislation, if enacted, would likely be a binding precedent for similar legislative demands. The Commission staff is not aware of any past service credit purchase request from a part-time professional with service between 1987 and 1993 that was excluded from coverage by the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), although PERA may have a better institutional memory about past requests and their disposition. If enacted, the proposed legislation would unlikely constitute a problematic legislation, since the number of minimally employed part-time professionals excluded from PERA-General during the period 1987-1993 is likely small and because the service credit purchase payment requirement does not appear to provide any concession to the purchaser at the expense of the retirement plan.

Appendix A

Background Information on Retirement Plan Service Credit and Service Credit Purchases

- a. Defined Benefit Plans. Most Minnesota public pension plans are defined benefit plans. In defined benefit plans, the pension benefit amount that is ultimately payable is pre-determinable or fixed using a formula or comparable arrangement. The fixed element of the benefit amount leaves a variable element, which is the funding required to provide that benefit. The formula utilizes allowable service credit and salary credit in the calculation, averaging the salary amounts for the five successive years' average salary period that produces the highest amount for use as the base to which is applied a total percentage amount determined by assigning a percentage amount to each year of allowable service credit.
- b. Historical Shift in Plan Types and to Salary-Based Plans. Minnesota's statewide retirement plans were not originally salary-related pension plans, with the predecessor to TRA established in 1915 as a money purchase (defined contribution) plan, with MSRS-General established in 1929 as a set dollar amount (\$200 per month) plan, and with PERA-General established in 1931 also as a set dollar amount (\$200 per month) plan. Conversion to salary-related pension plans occurred for MSRS-General and PERA-General in 1957, which was a recommendation of the initial interim predecessor to the Legislative Commission on Pensions and Retirement, and for TRA in 1969, which was a recommendation of the initial permanent predecessor to the Pension Commission. The first class city teacher retirement fund associations and Minneapolis Employees Retirement Fund (MERF) generally shifted to salary-related pension plans in the 1950s (the Duluth Teachers Retirement Fund Association (DTRFA) shifted in 1971).
- c. Definition of Minnesota Defined Benefit Public Pension Plan Service Credit. Allowable service credit in Minnesota's statewide and major local defined benefit retirement plans generally includes many different service periods, which are:
 1. Covered Current Service. Employment is a covered position with a covered employer for which member contributions have been deducted and transmitted to the retirement plan;
 2. Historic Credit in Plan Records. Service credit as reflected in the records of the retirement plan that predates the plan's establishment or reformulation;
 3. Military Service Leave. Periods of service in the U.S. Armed Forces during a leave of absence;
 4. Temporary Disability Periods. Periods of leaves caused by a temporary disability;
 5. Credit Reinstated by a Refund Repayment. Periods of service covered by a prior refund of member contributions which have been repaid subsequently;
 6. Part-Time Employment. Periods where full service credit is granted for part-time employment;
 7. Sabbatical Leaves and Other Leaves of Absence with Pay. Periods of an authorized leave of absence during which the member is paid a whole or a partial salary;
 8. Extended Leaves of Absence Without Pay. Periods of an authorized leave of absence without pay;
 9. Labor Union Employment or Elective Service. Periods of employment as an exclusive collective bargaining representative or as a elected official;
 10. Parental or Family Leaves of Absence. Periods of leaves or breaks in service for parental or family reasons;
 11. Strike Periods. Periods of a labor union strike; and
 12. Out-of-State Teaching or Other Outside Service. Periods of teaching service, Peace Corps service, or VISTA service.
- d. Purpose of Service Credit. Service credit in a Minnesota defined benefit retirement plan exists for three reasons, determining vesting rights, determining eligibility for an early normal retirement annuity, and determining the amount of a retirement annuity.

Vesting is the circumstance of possessing a non-forfeitable right to an eventual retirement annuity, even if covered employment is terminated before reaching retirement age. In virtually all Minnesota defined benefit retirement plans, the vesting period is three years of service credit, which need not be consecutive periods of service and which may include service covered by more than one Minnesota defined benefit retirement plan.

Early normal retirement annuity eligibility in Minnesota defined benefit retirement plans generally means qualification for the “Rule of 85,” where a member can retire with an unreduced retirement annuity when the sum of the person’s age and service credit total at least 85, or for the Minneapolis Employees Retirement Fund (MERF) or the Basic Program of the Minneapolis Teachers Retirement Fund Association (MTRFA-Basic), means qualification for the “30 and out” unreduced retirement annuity payable when a person has credit for at least 30 years of service credit.

Retirement annuity determination is the calculation of a member’s defined benefit retirement annuity, using the plan’s benefit accrual rate percentage (frequently 1.7 percent per year of service credit), multiplied by the member’s service credit, and the total applied to the member’s final average salary figure (highest five years average salary).

Defined benefit retirement plans exist to provide a retirement annuity at the conclusion of an employee’s normal working lifetime. Service credit allows for the retirement plan to bear its proportional share of the burden of the ultimate total retirement annuity amount.

- e. Special Legislation Service Credit Purchase Authorization. In Minnesota, until 1999, there were few general law service credit purchase authorizations, and service credit purchase authorizations were generally special law provisions.

The primary general law service credit purchase authorization was Minnesota Statutes 2004, section 354.51, enacted in 1931, when the Teachers Retirement Association (TRA) was a defined contribution retirement plan, which allows TRA members with 15 years of service who have pre-1953 out-of-state teaching service to purchase that service by making equivalent member contributions, plus interest at the rate of 8.5 percent per annum.

During the period 1957-2003, the Legislature has enacted 241 special laws authorizing one person or a small group of individuals to purchase prior service credit, distributed as follows:

<u>Year</u>	<u>Number</u>	<u>Year</u>	<u>Number</u>	<u>Year</u>	<u>Number</u>	<u>Year</u>	<u>Number</u>	<u>Year</u>	<u>Number</u>	<u>Year</u>	<u>Number</u>
1957	1	1971	2	1979	7	1986	6	1993	7	2000	8
1959	4	1973	4	1980	4	1987	3	1994	8	2001	10
1961	5	1974	5	1981	14	1988	7	1995	7	2002	2
1963	6	1975	10	1982	16	1989	12	1996	6	2003	6
1965	5	1976	4	1983	2	1990	10	1997	3	2004	1
1967	1	1977	9	1984	3	1991	6	1998	9	2005	1
1969	2	1978	9	1985	2	1992	6	1999	8		

A majority of special prior service credit purchase laws relate to the three major general employees retirement plans, with 33 special laws relating to the General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), with 75 special laws relating to the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General), and with 43 special laws relating to the Teachers Retirement Association (TRA).

In considering special law service credit purchase requests, the Legislative Commission on Pensions and Retirement has generally followed its Principles of Pension Policy, which require:

1. Individual Review. The Commission considers each service credit purchase request separately, whether the request is proposed legislation for a single person or is proposed legislation relating to a group of similarly situated individuals.
2. Public Employment. The period requested for purchase should be a period of public employment or service that is substantially akin to public employment. This is consistent with the notion that public pension plans should be providing coverage for public employees for periods of time when they were serving the public through public employment or through quasi-public employment. Coverage for a period when an individual provided private sector employment is not consistent with this statement.
3. Minnesota Connection. The employment period to be purchased should have a significant Minnesota connection. This is consistent with the notion that Minnesota taxpayers support these public pension plans and bear the investment risk in amassing plan assets. Given the support that taxpayers provide, it is appropriate that the service have a Minnesota connection, reflecting services provided to the people in the state.

4. Presumption of Active Member Status at the Time of Purchase. The principle states that contributions should be made by the member or in combination by the member and by the employer. It is presumed that the individual covered by the service purchase request is an active employee, because retirees generally are not considered to be “members” of a plan and these individuals no longer have a public employer. If there are unresolved issues of whether an individual should have service credit for a given period, those issues should be resolved before the individual terminates from public service, and certainly before the individual retires. The act of retiring undermines a claim that there is sufficient need for the Legislature to consider the coverage issue. If there were considerable hardship caused by the lack of service credit, presumably the individual would not have retired. Entering retirement suggests that the associated pension benefit is adequate without any further increase in the benefit level due to a purchase. Only on rare occasions have the Commission and the Legislature authorized service credit purchases by retirees.
5. Presumption of Purchase in a Defined Benefit Plan. The prior service credit purchase contributions in total should match the associated actuarial liability. The specific procedures in Minnesota Statutes and law for computing service credit purchase amounts, Minnesota Statutes, Sections 356.55 and 356.551, presume that the purchase is in a defined benefit plan with a benefit based on the individual’s high-five average salary. There is no process in law specifying a procedure for computing a “full actuarial value” purchase in a defined contribution plan, or even defining what that concept means in the context of a service purchase or service credit purchase in a defined contribution plan.
6. Full Actuarial Value Purchase. Within the context of a defined benefit plan, the pension fund should receive a payment from the employee, or from the employee and employer in combination, which equals the additional liability placed on the fund due to the purchase. This amount is referred to as the full actuarial value of the service credit purchase. The procedure used to compute this full actuarial value should be a methodology that accurately estimates the proper amounts. When clear evidence indicates that the employing unit committed an error that caused the individual to not receive pension plan coverage, the Commission has permitted the employee to make the employee contribution for the relevant time period, plus 8.5 percent interest, and the employer has been mandated to cover the remainder of the computed full actuarial value payment. If the employer does not directly make the payment following notification that the employee has made his or her portion of the full payment, the Commission has required that a sufficient amount to cover the remainder of the full actuarial value be deducted from any state aids that would otherwise be transmitted to the employer. The Commission has purposely departed from the full actuarial value requirement when there is evidence that the pension plan administration created the lack of service credit coverage due to pension plan administration error. In situations of pension plan error, the employee may be required to pay the contributions that would have been required for the relevant time period, plus 8.5 percent interest to adjust for the time value of money, leaving any difference between that payment and the full actuarial value to be absorbed by the pension fund.
7. No Violation of Equitable Considerations. Purchases of service credit should not violate equitable considerations. Equity is a resort to general principles of fairness and justice whenever the existing law is inadequate. In general, any issue or factor associated with a service credit purchase request which can be viewed as lacking fairness or being less than impartial can be a basis for rejecting a request. Requests by existing retirees to purchase additional service credit and have their annuities recomputed could be viewed as being a situation that violated equity considerations. New requests on behalf of individuals who were covered by purchase of service credit authorizations passed by earlier Legislatures but who are dissatisfied with the purchase of service credit terms that were provided can be considered as violating equity considerations. Individuals requesting service credit purchases for periods specifically excluded from plan coverage under the applicable law could be considered as violating equity considerations, among other policy concerns relating to those considerations. Requests to purchase service credit for periods covered by another pension plan may raise equity concerns. Generally, a service credit purchase is intended to fill a gap in coverage, not to create double coverage. Long delays in seeking remedial action can also be considered a violation of equity considerations. Individuals tend to wait until late in their career before seeking any remedial action for lost service credit. Prompt action, closer to the time period when the service credit problem occurred, would often result in a solution at a lower cost and would avoid efforts by the Commission to try to determine the factual situation many years, or even decades, after the event occurred.

- f. 1999-2004 General Service Credit Purchase Provisions. The recently expired full actuarial value service credit purchase provisions and the years in which they were enacted are as follows:

1999

- Military service (TRA and first class city teacher plans)
- Out-of-state teaching service (TRA and first class city teacher plans)
- Maternity leave or absence or maternity break-in-service (TRA and first class city teacher plans)
- Parochial or private school teaching service (TRA and first class city teacher plans)
- Peace Corps and VISTA service (TRA and first class city teacher plans)
- Charter school teaching (TRA and first class city teacher plans)
- Previously uncredited part-time teaching service (first class city teacher plans)

2000

- Military service (various MSRS plans, PERA plans)
- Teaching service credit for various nonprofit Community Based Corporation service (TRA and first class city teacher plans)

2001

- Out-of- country and tribal teaching service credit (TRA and first class city teacher plans)
- Developmental Achievement Center teaching service (TRA and first class city teacher plans)
- Uncovered teaching service at University of Minnesota (TRA and first class city teacher plans)
- Parental leave/break-in-service (teacher plans, various MSRS and PERA plans, various other plans)

In 1999, the Commission was persuaded to support several proposed generalized service credit purchase provisions applicable to the Teachers Retirement Association and the first class city teacher retirement fund associations (the Duluth Teachers Retirement Fund Association, the Minneapolis Teachers Retirement Fund Association, and the St. Paul Teachers Retirement Fund Association). Under these provisions, classes of individuals (those with prior military service, out-of-state teaching service in a K-12 situation, individuals who taught in parochial schools, provided Peace Corp service and various other groups), were permitted to purchase service credit in the applicable Minnesota plan for the specified service. These provisions, which were strongly supported by teacher groups, conflicted with the Commission's policy statement in several ways. All lacked any requirement of an individual review of the circumstance. Others were not related to public service or had no Minnesota connection.

In 2000, more service credit purchase provisions were added to law, this time for non-teacher plans, providing a full actuarial value service credit provision for individuals who had military service prior to becoming a public employee, or who failed to pay contribution requirements in a timely manner under other military leave service credit purchase provisions. These provisions enacted in 2000 were comparable to the military service credit provisions added to teacher plan law a year earlier. In 2000, teacher plan law was also revised to permit full actuarial value service credit purchases for non-profit community-based teaching service.

In 2001, several other service credit purchase provisions were enacted. An out-of-country teaching service credit purchase provision was created in teacher plan law, and also one for Development Achievement Center teaching. These new provisions included sections of law permitting purchase of service credit, not to exceed ten years, in the teacher plans for service while teaching at the University of Minnesota which was not covered by a pension plan at the university. These provisions stemmed from a legislative request for the executive director of the Minneapolis Employees Retirement Fund, who many years earlier taught some accounting courses at the University while employed in a position that was excluded from pension plan coverage. The final generalized service credit provision enacted was a family leave provision permitting individuals who may be covered by a teacher plan, or any of several other general employee and public safety plans, to purchase service credit for the past family leaves or family-related breaks-in-service.

There are several reasons why the Commission and Legislature may have supported the above provisions. First, the provisions were intended to be temporary. Each was set to expire a few years after enactment. The departure from policy may have been viewed as a short-term departure from established policy to address short-term market conditions for teachers. Second, the Legislature had been given assurances that the provisions created no financial harm to the pension funds because the purchases would be at full actuarial value. The methodology to compute full actuarial value purchase prices had been revised in 1998, and the teacher unions and the administrators of the teacher pension

funds were confident that the procedures would produce accurate price estimates, thereby shielding other fund contributors from subsidizing these purchases. When the revised methodology was enacted in 1998 as Minnesota Statutes, Section 356.55, the section included a provision requiring data to be retained and analyzed on every service credit purchase made using the procedure, and the section included an expiration date. If legislative review of these purchases suggested that the procedure was not accurate and was causing subsidies to occur, the section would be permitted to expire. If it expired, a previous procedure used to estimate full actuarial value, coded as Minnesota Statutes, Section 356.551, would again become effective. That prior procedure in Minnesota Statutes, Section 356.551 tended to produce higher cost estimates than the revised procedure. Teacher unions and other constituent groups favor continuing the revised procedure in Minnesota Statutes, Section 356.55, because it tends to produce lower prices. From a policy standpoint, the Minnesota Statutes, Section 356.55 procedure is better if it is more accurate than the prior procedure. If the lower prices are resulting in subsidies, its use harms the pension funds.

As the repeal date for the revised full actuarial methodology and each of these temporary generalized service credit provisions approached, the repeal dates were extended by the Legislature due to strong support for these provisions from the teacher unions and other constituent groups. Most of the provisions have now been extended more than once, but generally expired in July 2004.

Appendix B

Background Information on the PERA Exclusion of Independent Contractors and Part-Time Professionals

a. PERA-General Membership Inclusions and Exclusions At Large

When the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) was established in 1931, plan membership was optional for governmental subdivisions and, if the governmental subdivision elected to be a participating employer, was optional for employees employed before April 24, 1931, and was mandatory for employees employed after April 23, 1931. All counties, all first (except Minneapolis), second, and third class cities, including home rule cities, all public schools (except the Minneapolis public schools), and all villages with a population of at least 7,000 were eligible to be participating employers. Employees of a participating employer who were not paid in whole or in part from public funds, or who were covered by another public pension plan, or who were temporary employees, or who had an average length of employment annually of less than six months were excluded from PERA membership.

By 1941, the specification in law of PERA membership had become somewhat more complex. School districts were specified as eligible participating employers, reflecting the authorization of independent school districts. The 1941 exceptions from membership were:

- (1) employees of governmental subdivisions that had not elected to be participating employers;
- (2) employees hired before the governmental subdivisions became a participating employer and did not elect PERA membership;
- (3) employees of a participating employer who were not paid in whole or in part from public funds;
- (4) temporary employees of participating employers (defined as a person who is employed for less than six months within a 12-month period, or who is employed as a substitute for another employee who is on leave, or who is employed in a position that is not seasonal but is of an essentially temporary character, or who is employed part-time with total annual compensation of less than \$300 unless the person was in a government classified civil service position);
- (5) a member of another Minnesota public employee pension plan; or
- (6) a person who by virtue of past employment is entitled to a pension from another Minnesota public employee pension plan or who has been designated as a future beneficiary of a benefit from another Minnesota public employee pension plan.

In 1951, towns and boroughs were added as eligible participating employers. In 1951 and 1955, PERA membership was made mandatory for local government employees who were not eligible for other Minnesota public pension plan coverage. This resulted in a rapid growth in the PERA membership, from 8,246 members in 1946 to 36,470 members in 1956.

By 1957, more changes in the PERA membership specification had occurred. The League of Minnesota Municipalities and PERA itself were made eligible participating employers. PERA coverage was made mandatory for all employees of all governmental subdivisions unless the employee was specifically excluded or the employee was over age 60 on June 30, 1957, and had less than six years of service as of that date. Legislators, the secretary of the Minnesota Senate, and the chief clerk of the Minnesota House of Representatives were specifically included in PERA membership. The PERA membership exclusions were revised, with the major exclusions as follows:

- (1) person employed for professional services incidental to the person's regular profession and compensated on a per diem basis;
- (2) election officers;
- (3) employees of independent contractors performing public services;
- (4) patient or inmate help in local government charitable, penal, or correctional facilities;
- (5) members of boards, commissions, volunteer fire departments, bands, and other intermittent employees paid on a per diem, per meeting, or per fire basis;
- (6) temporary, emergency, or seasonal employees as defined by PERA rules; and
- (7) employees required to contribute to another Minnesota public pension plan on account of that employment.

In 1961, the PERA membership specification provisions continued to change. Local elected officials were given the option to be members of PERA and employees of local elected officials were included in PERA membership, as were district court reporters and port authority employees. An exclusion for police matrons employed by a city police department and transferred to a joint city-county detentions and corrections authority was also added to PERA law.

After 1961 and until 1974, public employees who had a salary of less than \$75 per month were excluded from PERA membership. In 1963, an exclusion for persons who elected to be excluded from PERA membership for religious reasons was added. In 1965, probate, municipal and special municipal judges were included in PERA membership and students who were occasionally employed part-time by governmental subdivisions were excluded from PERA membership. In 1967, the student exclusion was modified to apply to full-time students employed part-time as governmental employees. In 1971, the specific exclusion for volunteer firefighters was deleted from PERA law. In 1973, school district employees with separate salaries for driving their own buses were included in PERA coverage and exclusions were added for resident physicians, medical interns, pharmacist interns in public hospitals and for appointed or elected officials compensated entirely on a fee basis if not members in 1971.

In 1974, until 1977, the minimum salary threshold for PERA membership was increased to \$150 in any month during a year, or \$1,800 annually. The minimum salary threshold for PERA membership was increased in 1977 to \$250 in any month during a year or \$3,000 annually in 1977. In 1981, the minimum salary threshold for PERA membership increased to \$325 in any month during the year, or \$3,900 annually. Also, in 1981, city managers were granted the authority to elect an exclusion from PERA coverage in favor of separate individual deferred compensation program coverage. The current minimum salary threshold for PERA membership was set at \$425 in any month during the year, or \$5,100 annually, in 1988. In 1997, St. Paul school district pipe fitters were excluded from PERA membership and, in 2000, other St. Paul city and school district trades personnel were also excluded from PERA membership. The 1997 legislation was considered and recommended by the Legislative Commission on Pensions and Retirement. The 2000 legislation was not reviewed or recommended by the Commission, but was added by the Senate Governmental Operations Committee to the 2000 omnibus pension bill.

b. PERA-General Independent Contractor and Part-Time Professional Exclusions

From 1931, the establishment of the Public Employees Retirement Association (PERA) to 1957, independent contractors were not specifically excluded from retirement coverage, although Minnesota Statutes 1953, Section 353.01, Subdivision 2, required a PERA member to perform personal duties for a governmental subdivision as an officer or as an employee. In 1957, two specific exclusions with an independent contractor flavor were added, one for a person employed for professional services that are incidental to the person's regular professional duties with compensation on a per diem basis and the other for employees of independent contractors under contract with a governmental subdivision. In 1963, the exclusion for employees of independent contractors was modified to an exclusion for independent contractors and the employees of independent contractors. In 1973, these exclusions were again revised and people were excluded from PERA-General coverage where their public service was incidental to the person's regular professional duties, if they were independent contractors or employees of independent contractors, or if they served as appointed or elected officers while being paid entirely on a free basis and were not PERA-General members in 1971. PERA law does not define the term "independent contractor," so PERA must make the determination based on the commonly used general definition of the term. The term has an application for federal tax law, state tax law, and for Worker's Compensation law and the standards developed under those laws will inform PERA's determination.

The exclusion from PERA-General for persons employed for professional services where that service is incidental to regular professional duties was modified in 1987 (Laws 1987, Chapter 284, Article 5, Section 1) to define incidental service as service with compensation up to 25 percent of the person's total annual gross earnings for all professional duties. PERA-General law remained unchanged in this exclusion until 1993 (Laws 1993, Chapter 307, Article 4, Sections 1 and 3), when the independent contractor non-inclusion provision was moved from Minnesota Statutes, Section 353.01, Subdivision 2b, to Minnesota Statutes, Section 353.01, Subdivision 2, and when the incidental public sector professional services exclusion was eliminated. In 2001 (First Special Session Laws 2001, Chapter 10, Article 11, Sections 2 and 4), the PERA-General independent contractor non-inclusion provision was again moved from Minnesota Statutes, Section 353.01, Subdivision 2, to Minnesota Statutes, Section 353.01, Subdivision 2b.

Ch. 284, Art. 4 LAWS of MINNESOTA for 1987 1464

Sec. 4. Minnesota Statutes 1986, section 352D.015, subdivision 5, is amended to read:

Subd. 5. **COVERED EMPLOYMENT.** "Covered employment" means employment covered by this chapter or by chapter 352.

Sec. 5. **EFFECTIVE DATE.**

This article is effective the day following final enactment.

ARTICLE 5

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

ADMINISTRATIVE CHANGES

Section 1. Minnesota Statutes 1986, section 353.01, subdivision 2b, is amended to read:

Subd. 2b. **EXCLUDED EMPLOYEES.** The following persons are excluded from the meaning of "public employee":

(a) Persons employed for professional services where such service is incidental to regular professional duties. Service is incidental if compensation for it amounts to no more than 25 percent of a person's total annual gross earnings for all professional duties.

(b) Election officers.

(c) Independent contractors and their employees.

(d) Patient and inmate help in governmental subdivision charitable, penal and correctional institutions.

(e) Members of boards, commissions, bands and others who serve the governmental subdivision intermittently.

(f) Employees who hold positions of an essentially temporary or seasonal character, provided such employment does not continue for a period in excess of 120 working days in any calendar year or in any school year for school employees. Immediately following the expiration of such 120 working days if such employees continue in public service and earn in excess of \$325 in any one calendar month, the department heads must then report all such employees for membership and must cause employee contributions to be made on behalf of such employees in accordance with section 353.27, subdivision 4, and they shall remain members until termination of public service.

(g) Part-time employees who receive monthly compensation not exceeding

Changes or additions are indicated by underlining, deletions by strikesout.

1465 LAWS of MINNESOTA for 1987 Ch. 284, Art. 5

\$325, and part-time employees and elected officials whose annual compensation is stipulated in advance, in writing, to be not more than \$3,900 per calendar year or per school year for school employees for employment expected to be of a full year's duration or more than the prorated portion of \$3,900 per employment period for employment expected to be of less than a full year's duration, except that members shall continue their membership until termination of public service.

(h) Persons who first occupy an elected office after March 1, 1978, the compensation for which does not exceed \$325 per month.

(i) Emergency employees who are employed by reason of work caused by fire, flood, storm or similar disaster.

(j) Employees who by virtue of their employment are required to contribute to any other pension, relief or retirement fund established for the benefit of officers and employees of a governmental subdivision, except as an act of the legislature has specifically enabled participation by employees of a designated governmental subdivision in a plan supplemental to the public employees retirement association; provided that this clause shall not prevent a person from contributing to the public employees retirement association and also belonging to or contributing to another public pension fund for other service occurring during the same period of time.

(k) Police matrons employed in a police department of any city who are transferred to the jurisdiction of a joint city and county detention and corrections authority.

(l) Chaplains and nuns who have taken a vow of poverty as members of a religious order.

(m) Full-time students who are enrolled and are regularly attending classes at an accredited school, college or university; provided, no person employed full time by a governmental subdivision shall be exempt under this paragraph.

(n) Resident physicians, medical interns and pharmacist interns who are serving in public hospitals.

(o) Appointed or elected officers, paid entirely on a fee basis, and who were not members on June 30, 1971.

(p) Nothing in Laws 1973, chapter 753 shall be interpreted to impair or revoke any option exercised under Laws 1963, chapter 793.

(q) Persons employed in subsidized on-the-job training, work experience or public service employment as enrollees under the Federal Comprehensive Employment and Training Act from and after March 30, 1978, unless the person has as of the later of March 30, 1978 or the date of employment sufficient service credit in the retirement fund to meet the minimum vesting requirements for a deferred retirement annuity, or the employer agrees in writing on forms prescribed by the executive director to make the required employer contributions;

Changes or additions are indicated by underlining, deletions by strikesout.

Subd. 2a. INCLUDED EMPLOYEES. The following persons are included in the meaning of "public employees": Public employees whose salary from one governmental subdivision exceeds \$425 in any month shall participate as members of the association. If the salary of an employee is less than \$425 in a subsequent month, the employee retains membership eligibility. The following persons are considered public employees:

(1) employees whose annual salary from one governmental subdivision exceeds a stipulation prepared in advance, in writing, to be not more than \$5,100 per calendar year or per school year for school employees for employment expected to be of a full year's duration or more than the prorated portion of \$5,100 per employment period expected to be of less than a full year's duration. If compensation from one governmental subdivision to an employee under this clause exceeds \$5,100 per calendar year or school year after being stipulated in advance not to exceed that amount, the stipulation is no longer valid and contributions must be made on behalf of the employee under section 353.27, subdivision 12, from the month in which the employee's salary first exceeded \$425;

(2) employees whose total salary from concurrent nontemporary positions in one governmental subdivision exceeds \$425 in any month;

(3) elected or appointed officers and for service to which they were elected by the public-at-large, or persons appointed to fill a vacancy in an elective office, who elect to participate by filing an application for membership, but not for services on a joint or regional board that is a governmental subdivision under subdivision 6, paragraph (a), unless the salary earned for that service exceeds \$425 in any month. The option to become a member, once exercised, may not be withdrawn during the incumbency of the person in office;

(4) members who are appointed by the governor to be a state department head and elect not to be covered by the Minnesota state retirement system under section 352.021;

(5) employees of elected officers;

(6) persons who elect to remain members under section 480.181, subdivision 2;

(7) officers and employees of the public employees retirement association;

(8) employees of the league of Minnesota cities;

(9) employees of the association of metropolitan municipalities;

(10) officers and employees of public hospitals owned or operated by or as an integral part of a governmental subdivision or governmental subdivisions;

(11) employees of a school district who receive separate salaries for driving their own buses;

New language is indicated by underline, deletions by ~~strikeout~~.

(12) employees of the association of Minnesota counties;

(13) employees of the metropolitan intercounty association;

(14) employees of the Minnesota municipal utilities association;

(15) employees of the Minnesota association of townships when the board of the association, at its option, certifies to the executive director that its employees are to be included for purposes of retirement coverage, in which case coverage of all employees of the association is permanent;

(16) employees of the metropolitan airports commission if employment initially commenced after June 30, 1970;

(17) employees of the Minnesota employees retirement fund if employment initially commenced after June 30, 1970;

(18) employees of the range association of municipalities and schools;

(19) employees of the soil and water conservation districts;

(20) employees of a county historical society who are county employees;

(21) employees of a county historical society located in the county whom the county, at its option, certifies to the executive director to be county employees for purposes of retirement coverage under this chapter, which status must be accorded to all similarly situated county historical society employees and, once established, must continue as long as a person is an employee of the county historical society and is not excluded under subdivision 2b; and

(22) employees of an economic development authority created or operating under sections 469.090 to 469.108;

(23) employees of the department of military affairs of the state of Minnesota who are full-time firefighters; and

(24) employees who became members before July 1, 1988, based on the total salary of positions held in more than one governmental subdivision.

Sec. 3. Minnesota Statutes 1992, section 353.01, subdivision 2b, is amended to read:

Subd. 2b. EXCLUDED EMPLOYEES. The following persons are excluded from the meaning of "public employee" public employees shall not participate as members of the association:

(1) persons who are employed for professional services where the service is incidental to regular professional duties; determined on the basis that compensation for the service amounts to no more than 25 percent of the person's total annual gross earnings for all professional duties elected public officers, or persons appointed to fill a vacancy in an elective office, who do not elect to participate in the association by filing an application for membership;

New language is indicated by underline, deletions by ~~strikeout~~.

- (2) election officers;
- (3) independent contractors and their employees;

(4) patient and inmate personnel who perform services in charitable, penal, or correctional institutions of a governmental subdivision;

(5) members of boards and commissions who serve a governmental subdivision intermittently unless their position on the board or commission is the result of public employment within the same governmental unit;

(6) (4) employees who are hired for a period of less than six consecutive months temporary position under subdivision 12a, and employees who resign from a nontemporary position and accept a temporary position within 30 days in the same governmental subdivision, but not those employees who are hired for an unlimited period but are serving a probationary period. If the period of employment is extended beyond the six-month period six consecutive months and the employee earns more than \$425 from one governmental subdivision in any one calendar month, the department head shall report the employee for membership and require employee deductions be made on behalf of the employee under section 353.27, subdivision 4.

Membership eligibility of an employee who resigns or is dismissed from a temporary position and within 30 days accepts another temporary position in the same governmental subdivision is determined on the total length of employment rather than on each separate position. Membership eligibility of an employee who holds concurrent temporary employment of six months or less and nontemporary positions in one governmental subdivision must be determined by the length of employment and salary of each separate position. Membership eligibility of an employee who holds nontemporary positions in one governmental subdivision must be determined by the total salary of all positions;

(7) (5) employees whose actual compensation salary from one governmental subdivision does not exceed \$425 per month, or whose annual compensation salary from one governmental subdivision as stipulated does not exceed a stipulation prepared in advance, in writing, so be not more than the salary must not exceed \$5,100 per calendar year or per school year for school employees for employment expected to be of a full year's duration or more than the prorated portion of \$5,100 per employment period for employment expected to be of less than a full year's duration; except that members continue their membership until termination of public service as defined in subdivision 11a. Membership eligibility of an employee who holds concurrent part-time positions under this clause must be determined by the total salary of all such positions in one governmental subdivision. If compensation from one governmental subdivision to an employee under this paragraph exceeds \$5,100 per calendar year or school year after being stipulated in advance not to exceed that amount, the stipulation is no longer valid and contributions must be made on behalf of the employee in accordance with section 353.27, subdivision 12, from the month in which the employee's earnings first exceeded \$425.

New language is indicated by underline, deletions by strikethrough.

(8) persons who first occupy an elected office after July 1, 1988; the compensation for which does not exceed \$425 per month;

(9) emergency (6) employees who are employed by reason of work emergency caused by fire, flood, storm, or similar disaster;

(10) (7) employees who by virtue of their employment in one governmental subdivision are required by law to be a member of and to contribute to any of the plans or funds administered by the Minnesota state retirement system, the teachers retirement association, the Duluth teachers retirement fund association, the Minneapolis teachers retirement association, the St. Paul teachers retirement fund association, the Minneapolis employees retirement fund, or any police or firefighters relief association governed by section 69.77 that has not consolidated with the public employees retirement association, or any police or firefighters relief association that has consolidated with the public employees retirement association but whose members have not elected the type of benefit coverage provided by the public employees police and fire fund under sections 353A.01 to 353A.10. This clause must not be construed to prevent a person from being a member of and contributing to the public employees retirement association and also belonging to and contributing to another public pension fund for other service occurring during the same period of time. A person who meets the definition of "public employee" in subdivision 2 by virtue of other service occurring during the same period of time becomes a member of the association unless contributions are made to another public retirement fund on the salary based on the other service or to the teachers retirement association by a teacher as defined in section 354.05, subdivision 2;

(11) police matrons who are employed in a police department of a city who are transferred to the jurisdiction of a joint city and county detention and corrections authority;

(12) (8) persons who are excluded from coverage under the federal old age, survivors, disability, and health insurance program for the performance of service as specified in United States Code, title 42, section 410(a)(8)(A), as amended through January 1, 1987, if no irrevocable election of coverage has been made under section 3121(r) of the Internal Revenue Code of 1954, as amended;

(13) (9) full-time students who are enrolled and are regularly attending classes at an accredited school, college, or university and who are part-time employees as defined by a governmental subdivision;

(14) (10) resident physicians, medical interns, and pharmacist residents and pharmacist interns who are serving in a degree or residency program in public hospitals and;

(11) students who are serving in an internship or residency program sponsored by an accredited educational institution;

New language is indicated by underline, deletions by strikethrough.

(45) appointed or elected officers who are paid entirely on a fee basis and who were not members on June 30, 1971;

(46) (12) persons who hold a part-time adult supplementary technical college license who render part-time teaching service in a technical college;

(47) persons exempt from licensure under section 125.034;

(48) persons employed by the Minnesota community development agency;

(13) foreign citizens working for a governmental subdivision with a work permit of less than three years, or an H-1b visa valid for less than three years of employment. Upon notice to the association that the work permit or visa extends beyond the three-year period, the foreign citizens are eligible for membership from the date of the extension.

(14) public hospital employees who elected not to participate as members of the association before 1972 and who did not elect to participate from July 1, 1988 to October 1, 1988;

(49) (15) except as provided in section 353.86, volunteer ambulance service personnel, as defined in subdivision 35, but persons who serve as volunteer ambulance service personnel may still qualify as public employees under subdivision 2 and may be members of the public employees retirement association and participants in the public employees retirement fund or the public employees police and fire fund on the basis of compensation received from public employment service other than service as volunteer ambulance service personnel; and

(20) (16) except as provided in section 353.87, volunteer firefighters, as defined in subdivision 36, engaging in activities undertaken as part of volunteer firefighter duties; provided that a person who is a volunteer firefighter may still qualify as a public employee under subdivision 2 and may be a member of the public employees retirement association and a participant in the public employees retirement fund or the public employees police and fire fund on the basis of compensation received from public employment activities other than those as a volunteer firefighter.

Sec. 4. Minnesota Statutes 1992, section 353.01, subdivision 6, is amended to read:

Subd. 6. GOVERNMENTAL SUBDIVISION. (a) "Governmental subdivision" means a county, city, town, school district within this state, or a department or unit of state government, or any public body whose revenues are derived from taxation, fees, assessments or from other sources; ~~but~~.

(b) Governmental subdivision also means the public employees retirement association, the league of Minnesota cities, the association of metropolitan municipalities, public hospitals owned or operated by, or an integral part of, a governmental subdivision or governmental subdivisions, the association of Min-

New language is indicated by underline, deletions by strikethrough.

nesota counties, the metropolitan intercounty association, the Minnesota municipal utilities association, the metropolitan airports commission, and the Minneapolis employees retirement fund for employment initially commenced after June 30, 1979, the range association of municipalities and schools, soil and water conservation districts, and economic development authorities created or operating under sections 469.090 to 469.108.

(c) Governmental subdivision does not mean any municipal housing and redevelopment authority organized under the provisions of sections 469.001 to 469.047; or any port authority organized under sections 469.048 to 469.068; or any hospital district organized or reorganized prior to July 1, 1975, under sections 447.31 to 447.37 or the successor of the district, nor the Minneapolis community development agency.

Sec. 5. Minnesota Statutes 1992, section 353.01, subdivision 7, is amended to read:

Subd. 7. MEMBER. "Member" means a person who accepts employment as a "public employee" under subdivision 2, is an employee under subdivision 2a, and is not covered by the plan established in chapter 353D. A person who is a member remains a member while performing services as a public employee and while on an authorized leave of absence or an authorized temporary layoff; provided, however, (1) that any elected public officer or any person appointed to fill a vacancy in an elective office shall have the right to exercise an option to become a member by filing application for membership, but the option to become a member, once exercised, may not be withdrawn during the term of the person in office; and (2) that any member who is appointed by the governor to be a state department head and elects pursuant to section 352.021, subdivision 2, not to be covered by the Minnesota state retirement system, shall remain a member of the public employees retirement association. Membership in the retirement association of any person shall terminate upon the person ceasing to be a "public employee."

Sec. 6. Minnesota Statutes 1992, section 353.01, is amended by adding a subdivision to read:

Subd. 7a. FORMER MEMBER. "Former member" means a member of the association who terminates public service under subdivision 11a or membership under subdivision 11b.

Sec. 7. Minnesota Statutes 1992, section 353.01, subdivision 10, is amended to read:

Subd. 10. SALARY. (a) "Salary" means the periodical compensation of a public employee, before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs, and also means "wages" and includes net income from fees.

(b) Salary does not mean fees paid to district court reporters ~~are net salary~~, unused annual or sick leave payments, in lump-sum or periodic payments, ~~are~~

New language is indicated by underline, deletions by strikethrough.

- 1.1 moves to amend S.F. No. 1995; H.F. No. 2196, as follows:
- 1.2 Page 2, line 3, after "is" delete the balance of the line and insert "21 months"
- 1.3 Page 2, line 4, delete "to December 31, 1993"

Senator LeClair introduced--

S.F. No. 1995: Referred to the Committee on State and Local Government Operations.

1 A bill for an act

2 relating to retirement; general employees retirement
3 plan of the Public Employees Retirement Association;
4 authorizing the purchase of service credit for a
5 period of prior employment as a public defender.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

7 Section 1. [PERA-GENERAL; PUBLIC DEFENDER SERVICE CREDIT
8 PURCHASE.]

9 (a) An eligible person described in paragraph (b) may
10 purchase allowable service credit in the general employees
11 retirement plan of the Public Employees Retirement Association
12 for the period described in paragraph (c) by making the payment
13 required under paragraph (d).

14 (b) An eligible person is a person who:

15 (1) was born on October 7, 1949;

16 (2) was employed as a public defender by the Tenth Judicial
17 District on July 1, 1987;

18 (3) was also retained as an independent contractor by
19 Washington County as a public defender as of June 12, 1989;

20 (4) was determined to have had deductions related to the
21 Tenth Judicial District employment for the general employees
22 retirement plan of the Public Employees Retirement Association
23 taken in error and had those deductions returned on January 7,
24 1991; and

25 (5) is currently a member of the general state employees

1 retirement plan of the Minnesota State Retirement System.

2 (c) The period of allowable service credit available for
3 purchase under this section is six years, from January 1, 1988,
4 to December 31, 1993.

5 (d) The prior service credit purchase payment must be
6 calculated under Minnesota Statutes, section 356.551.

7 Sec. 2. [EFFECTIVE DATE.]

8 (a) Section 1 is effective the day following final
9 enactment.

10 (b) Section 1 expires on July 1, 2007.